

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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Megan Hemling, individually and as	)	
Personal Representative for the Spouse	)	
and Children of Robert J. Hemling, Decedent,	)	
	)	
Plaintiff,	)	Civil Action No. 3:19-CV-00894
	)	
vs.	)	
	)	
Soo Line Railroad Company,,a corporation,	)	
d/b/a Canadian Pacific, a Minnesota corporation,	)	
and Cedar Creek, LLC, a domestic limited	)	
liability company,	)	
	)	
Defendants.	)	

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**MEMORANDUM IN RESPONSE TO PLAINTIFF’S DISCOVERY MOTION BY SOO  
LINE RAILROAD COMPANYYY**

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The Defendant Soo Line Railroad Company, by its attorney Borgelt, Powell, Peterson & Frauen, S.C., hereby responds to the Plaintiff’s discovery motion to Soo Line Railroad Company

The plaintiff’s request for photographs, diagrams, and measurements taken post-accident are requests that have been made and responded to by the Soo Line Railroad Company repeatedly over the last several years. In the identical case to the matter before the court, filed in Hennepin County, Minnesota Case number 27-CV-19-1574, which case is still active in that court despite the fact that the identical action with the addition of Cedar Creek Lumber Company is before this court, the plaintiff filed multiple requests for the production of documents which were responded to and have been attached as exhibits A and B.

As the court will see from a review of the plaintiff's Request for Production of Documents, set one, questions three, six, seven, twenty-two and forty-five, the plaintiff requested the same documentation that it requests in its current motion. In exhibit A, Soo Line Railroad Company provided answers to these questions and attached documentation, which was provided for download from a dropbox link, and with the folder containing the documents in question, being attached as exhibit C. The Soo Line's response to the plaintiff's request for production was served on the plaintiff on June 11, 2019.

The Soo Line Railroad Company subsequently prepared and served a supplemental response to the plaintiff's Request for Production of Documents in the Minnesota action, attached as exhibit B and dated July 10, 2019. In this supplemental response Soo Line Railroad Company provided additional documentation in response to the requests propounded with such documentation more fully described in exhibit C.

In the current case, Soo Line Railroad Company responded to the plaintiff's request for production of documents, set one, which asked for the very same documentation which the plaintiff now seems to ask again for in its motion. The Soo Line Railroad Company filed its response on April 1, 2020 to the plaintiff's request for production of documents with answers specifically addressing the requests being brought to the court's attention again now, and the Soo Line Railroad Company provided documentation requested in conjunction with the response to questions two, six, seven, twenty-one, thirty-four, and forty-two as shown within Ex. D.

The Soo Line Railroad Company has a continuing duty to supplement its past

responses and will do so with respect to additional documentation in the possession of Soo Line Railroad Company, however no additional documentation is in the possession of the company, based upon the search of the company's records by the responsible officer, Chad Barron, claims manager for the Soo Line Railroad Company, and signatory to the company's answers to the plaintiff's interrogatory questions.

The Soo Line Railroad Company through conversations with myself and plaintiff's counsel, Cortney LeNeave has been requested to provide to the plaintiff's a specific piece of correspondence authored by counsel for the Soo Line Railroad Company and forwarded to Lumbermens Insurance Company as a communication related to the existence of insurance coverage for the railroad. The existence of such a letter has previously been disclosed to attorney LeNeave and as can be seen by reference to the email attached as exhibit E, conversations have taken place with respect to the privileged nature of this correspondence. Our formal privilege log with respect to the plaintiff's request in this regard is attached as exhibit F.

In light of the fact that the Soo Line Railroad Company has repeatedly, and over several years, provided documents to the plaintiff's specifically responsive to the requests that the plaintiff continues to make in its motion, the plaintiff's further requests should be denied.

Dated this 12th day of April, 2020.

**BORGELT, POWELL, PETERSON & FRAUEN S.C.**  
Attorneys for Defendant, Soo Line Railroad Company  
d/b/a Canadian Pacific and Canadian Pacific

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